

**Letter of Findings: 02-20140268P
Penalty
For Tax Year 2001**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration - Penalty.

Authority: IC § 6-3-4-4.1.

Taxpayer requests that the Department abate the penalty.

STATEMENT OF FACTS

Taxpayer is an out of state company, conducting business in Indiana prior to October 2004. Taxpayer was audited by the Internal Revenue Service ("IRS") for 2001, 2002, 2003, and 2004 tax years. The IRS made several adjustments which were finalized in June 2013 ("RAR Adjustments").

In December 2013, pursuant to the RAR Adjustments, Taxpayer amended its 2001 Indiana corporate income tax return filing (IT-20X), claiming a refund of \$5,126 for the tax year 2001. Upon review, the Indiana Department of Revenue ("Department") denied Taxpayer's refund and also imposed an underpayment penalty in the amount of \$7,271.24.

Taxpayer protests the refund denial and the penalty. A phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

Taxpayer amended its 2001 corporate income tax return, claiming that it is entitled to a refund based on the RAR Adjustments. The Department denied Taxpayer's refund and also imposed an underpayment penalty for the tax year 2001 as a result. The Department denied Taxpayer's refund on the ground that Taxpayer was previously audited by the Department in 2005, which was before the IRS's audit, but failed to include the Department's audit adjustments in that 2001 Indiana amended return. The Department further imposed an underpayment penalty because, for the 2001 tax year, Taxpayer had failed to timely remit sufficient estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(e) (as in effect for tax year 2001).

IC § 6-3-4-4.1(e) states:

The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (d) or (g). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax plus supplemental net income tax plus gross income tax which equal or exceed:

- (1) twenty percent (20[percent]) of the final tax liability for such taxable year; or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the sum of the corporation's final adjusted gross income tax plus supplemental net income tax liability for such taxable year.

In this instance, after the IRS's audit was finalized, Taxpayer is required, within a certain period of time, to amend

its 2001 Indiana corporate income tax return, reporting the RAR Adjustments. Taxpayer timely filed an IT-20X reporting the changes, but it did not include the Department's adjustments made in 2005. Subsequently, Taxpayer resubmitted a revised IT-20X to correct that error. Upon review, the corrected IT-20X does reflect the correct amount of the refund pursuant to the RAR Adjustments. Thus, the Department will process Taxpayer's corrected amended IT-20X accordingly.

Additionally, as to the underpayment penalty, Taxpayer had previously protested and received abatement for the underpayment penalty originally imposed in the Department's audit. Thus, the imposition of the underpayment penalty is not appropriate.

FINDING

Taxpayer's protest is sustained.

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